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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY LEE ARGO,

Defendant and Appellant.

B171720

(Los Angeles County
Super. Ct. No. PA044048)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Ronald S. Coen, Judge. Affirmed.

James E. Blatt for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Senior Assistant Attorney General, William T. Harter and
Michael A. Katz, Deputy Attorneys General, for Plaintiff and Respondent.

Following denial of his motion to suppress evidence, Gary Lee Argo pleaded guilty to one count of possessing cocaine for sale. The trial court suspended imposition of sentence and placed Argo on three years of formal probation on condition he serve 180 days in county jail. On appeal Argo argues the trial court erroneously denied his suppression motion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Los Angeles Police Officer Robert Plourde testified at the suppression hearing that he and his partner Rolando Rodriguez were investigating citizen complaints of narcotics activity at a residence in Lake View Terrace. They approached the residence in their unmarked police car and noticed Argo sitting alone in his truck. The truck was stopped, and its brake lights were illuminated. Rodriguez parked the police car 30 to 40 feet away from the truck.

Plourde walked to the passenger side of the truck, displaying his police badge. The truck windows were closed. Plourde made eye contact with Argo, but initially did not speak to him. Argo “kind of nodded towards” the officer and opened the truck’s passenger door. Through the open door Plourde inquired whether Argo lived at the residence. Argo replied that he lived in Tujunga. Plourde asked if Argo would “mind” talking to the officers for a minute. Argo replied, “No problem.” Plourde then asked if Argo could step out of his truck to talk with them. Argo responded, “Sure,” and emerged from the driver’s side of the truck. At the time Plourde did not tell Argo the officers were conducting a narcotics investigation.

Rodriguez confirmed most of Plourde’s description of the initial contact with Argo and added that he thought he had heard Plourde inform Argo they were conducting a narcotics investigation. Rodriguez spoke with Argo after he stepped out of the truck, asking him whether he possessed any narcotics or weapons. Argo replied that he had a small knife on him. Rodriguez requested and received permission to retrieve the knife and to search Argo. Rodriguez then asked whether he could look in Argo’s truck. Argo said, “I guess so.” As Plourde searched the truck, Rodriguez engaged in “chit-chat” with

Argo. The officers handcuffed Argo after Plourde found methamphetamine, cocaine, a pager, cellular telephone and \$130 in the truck.

Argo also testified at the hearing in support of his motion to suppress. He explained he was a ceramic tile contractor and had driven to the Lake View Terrace residence where his brother was working. Argo stopped his truck with the engine running and his foot on the brake pedal to use his cellular telephone. As he finished his conversation, a car drove around his truck and stopped, blocking his path. Plourde got out of the car and approached Argo on the passenger side of the truck. He nodded to Argo, displayed his badge and identified himself as a police officer. The window was partially open, and Argo tried to roll it down without success. Plourde asked him, "Could you open up the door?" Plourde told Argo to turn off his engine and to put out his cigarette and said he was conducting a narcotics investigation.

According to Argo, he was never asked "permission to get out of the car [*sic*]." Argo felt he did not have a choice because "everything was more of a demand." The officers "were already in control or wanted to be in control of the situation." After Argo stepped out of his truck, Rodriguez approached him on the driver's side. The officers asked him for his identification and inquired whether he had previously been arrested. Argo replied that he had never been arrested and that his identification was inside the truck. The officers allowed him to retrieve it. Rodriguez then conducted a pat search of Argo during which he asked whether Argo had any weapons. Argo responded that he had a knife in his pocket, which the officer felt and then removed. While Rodriguez conducted the pat search, Plourde searched the truck and found narcotics.

Argo insisted the officers did not request, and he never gave, his permission for the pat search. Neither officer asked for consent to search his truck, and Argo did not consent to the search. At no time did Argo feel free to leave the scene.

At the conclusion of the hearing the trial court denied Argo's motion to suppress the evidence recovered from the truck. The court expressly found the officers' testimony

credible and “specifically disbelieve[d]” Argo’s testimony. The court then held the contact between the officers and Argo was a “consensual encounter and not a detention.”

CONTENTIONS

Argo contends that from the time he was asked to step out of his truck his encounter with Officers Plourde and Rodriguez was an unlawful detention, unsupported by either probable cause or a reasonable suspicion he was involved in criminal activity, and that any subsequent consent to search he may have given was invalid.

DISCUSSION

1. *Standard of Review*

On review of a ruling on a motion to suppress, the appellate court defers to the trial court’s findings of fact, express or implied, if supported by substantial evidence. (*People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. James* (1977) 19 Cal.3d 99, 107.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*James*, at p. 107.) In determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*People v. Glaser* (1995) 11 Cal.4th 354, 362; *People v. Leyba* (1981) 29 Cal.3d 591, 597.¹)

2. *The Motion to Suppress Was Properly Denied*

A consensual encounter between a police officer and an individual does not trigger Fourth Amendment scrutiny and requires no articulable suspicion that the person has committed or is about to commit a crime. (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.) A detention does not occur when a police officer merely approaches an individual in a

¹ The Fourth Amendment guarantee of the right to be free from unreasonable searches and seizures applies to the states through the Fourteenth Amendment. (U.S. Const., 4th & 14th Amends.; *People v. Camacho* (2000) 23 Cal.4th 824, 829-830; see *Mapp v. Ohio* (1961) 367 U.S. 643 [81 S.Ct. 1684, 6 L.Ed.2d 1081], limited on another ground in *United States v. Leon* (1984) 468 U.S. 897, 906 [104 S.Ct. 3405, 83 L.Ed.2d 677].)

public place and asks questions. (*Ibid.*) “Even when law enforcement officers have no basis for suspecting a particular individual, they may pose questions, ask for identification, and request consent to search luggage -- provided they do not induce cooperation by coercive means.” (*United States v. Drayton* (2002) 536 U.S. 194, 201-202 [122 S.Ct. 2105, 153 L.Ed.2d 242]; *In re Manuel G.*, at p. 821 [“As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority, in some manner restrains the individual’s liberty, does a seizure occur.”].)

“[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.’ [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation.” (*In re Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Circumstances indicative of a detention are the presence of several officers, weapon display, physical touching, and coercive language or tone of voice mandating compliance. (*Ibid.*; *United States v. Mendenhall* (1980) 446 U.S. 544, 554 [100 S.Ct. 1870, 1877, 64 L.Ed.2d 497].) That most people respond to a police request without being told they are free not to respond, however, does not vitiate the consensual nature of the response. (*INS v. Delgado* (1984) 466 U.S. 210, 216 [104 S.Ct. 1758, 80 L.Ed.2d 247].)

Based on the trial court’s assessment of the relative credibility of Plourde’s and Rodriguez’s descriptions of the encounter when compared to that of Argo, it is plain no detention or other seizure occurred either when Plourde first asked Argo if he would “mind” talking to the officers for a minute or when he asked whether Argo would step out of his truck to speak with them. Mere requests, as opposed to commands dictating a person’s conduct, do not constitute a Fourth Amendment restraint. Moreover those

requests were unaccompanied by threats or physical force. As Argo testified, both Plourde and Rodriguez were “polite.” Neither officer displayed a weapon, raised his voice, physically touched Argo or barred him from walking or driving away. In short, Argo’s decision to cooperate was entirely consensual.²

Even if not unlawfully detained, Argo asserts his consent to the searches of his person and his truck were not voluntary. When Rodriguez requested permission to search Argo and to retrieve the small knife Argo had acknowledged he was carrying, Argo replied, ““Go ahead, I don’t have anything.”” When Rodriguez then asked for consent to search the truck, Argo said, ““I guess so.”” Nothing in the record suggests Argo’s free will was overborne by Rodriguez or Plourde. Argo was not detained when Rodriguez asked for consent. Neither officer displayed his weapon or otherwise coerced Argo to consent to either search by words or actions. Nor is there evidence Argo’s consent was gained through deceptive methods. (See *People v. Ledesma* (1987) 43 Cal.3d 171, 233-234; *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 226-227 [93 S.Ct. 2041, 36 L.Ed.2d 854].) Substantial evidence supports the trial court’s conclusion Argo voluntarily consented to the search of his person and his truck, as he had shortly before consented to stepping out of his truck to speak to the officers. The motion to suppress was properly denied.

² Argo’s argument that no reasonable person would have felt free to leave under the circumstances present here is based, in the main, on the fact that the officers displayed their badges and the disputed contention Plourde told him the officers were investigating narcotics activity. Even if a reasonable person believes that he or she is “the object of official scrutiny,” however, that does not “amount to a detention,” let alone an arrest. (*People v. Perez* (1989) 211 Cal.App.3d 1492, 1496; *People v. Franklin* (1987) 192 Cal.App.3d 935, 940; see *Florida v. Royer* (1983) 460 U.S. 491, 497-498 [103 S.Ct. 1319, 75 L.Ed.2d 229]; *People v. Hughes* (2002) 27 Cal.4th 287, 328.)

DISCUSSION

The judgment is affirmed.

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PERLUSS, P. J.

We concur:

JOHNSON, J.

ZELON, J.